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ABSTRACT

The purpose of this publication is to bring together in easily accessible form the most applicable New York state laws and administrative regulations (including related decisions and legal opinions) that govern the responsibilities of local officials for local records and define the mandate of the state archives. The laws are listed in six parts: (1) general laws relating to local public records; (2) laws governing disposition of local public records; (3) laws governing the microfilming of local public records; (4) selected laws relating to custody of local public records; (5) laws pertaining to public access to records; and (6) the New York State Historical Records Advisory Board. (Author/MLF)

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PUBLIC RECORDS & STATE LAW

Selected Laws, Decisions, and Opinions Relating to Local Public Records

The University of the State of New York
THE STATE EDUCATION DEPARTMENT
Office of Cultural Education
State Archives
Albany, New York 12230
1980

EA 013 447

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INTRODUCTION

Since the early years of this century New York State has shown increasing commitment to the protection, preservation and management of local public records. This commitment, expressed in legislation, is reflected in the local records program administered by the State Archives.

The purpose of *Public Records and State Law* is to bring together in easily accessible form the most applicable laws and administrative regulations, including related decisions and legal opinions, which govern the responsibilities of local officials for local records and define the mandate of the State Archives. Since these laws appear scattered throughout the body of the *Laws of the State of New York*, it is difficult for officials to be familiar with them all. This booklet should be a helpful reference source.

Public Records and State Law is part of the State Archives' continuing effort to provide records management services to local governmental units. The State Archives' Local Records Section, formerly part of the Office of State History, supervises the protection, preservation, disposition, microfilming, and general management of the records of counties and cities outside of New York City, as well as towns, villages, school districts, fire districts, and all other local public corporations. The section provides guidelines to help these many governmental units achieve cost efficient records management practices that are in compliance with the laws and regulations governing the maintenance and disposal of local public records. The State Archives also provides advisory services to local municipalities interested in establishing a local archives for public records of enduring legal, administrative or historical value.

The camera-ready text of the laws included in this publication was supplied by the Legislative Bill Drafting Commission from its computer data base which contains the entire text of the *Laws of the State of New York*. The Commission's system is maintained to expedite legislation and aid legislators and their staff. The data base is normally used for preparing and printing proposed legislation and for printing specific laws. Thanks to the Legislative Bill Drafting Commission, *Public Records and State Law* is accurate and current. Changes are made frequently, however, in existing laws and regulations, and the latest applicable laws should be checked. In order to keep this publication current, we hope to supply update sheets for insertion into this loose-leaf booklet.

Public Records and State Law is a reference tool for local officials and other interested citizens. It is arranged topically so that no legal expertise is necessary. Editor's notes further explain the text of the laws and describe State Archives policy. Those interested in specific laws or regulations may use the "Law Finder" appearing at the end of the booklet. It is hoped that this pamphlet will be both informative and convenient to use. The State Archives, however, welcomes any suggestions to improve the format or content of this publication.

Local municipal units may be involved in legal action concerning local public records, or may require further clarification of the laws, regulations or other material contained in *Public Records and State Law*. If such occasions arise, officials are urged to seek the advice of their designated attorney.

Comments concerning this publication or questions regarding public records and their management should be directed to:

New York State Education Department
State Archives
Local Records Section
Cultural Education Center
Albany, NY 12230

Telephone 518-474-6926

PART I - GENERAL LAWS RELATING TO LOCAL PUBLIC RECORDS

1.1 FUNCTIONS OF THE STATE ARCHIVES RELATING TO LOCAL PUBLIC RECORDS

EDUCATION LAW, SECTION 142. FUNCTIONS OF THE STATE ARCHIVES

Sec. 142. State archives. 1. There shall be established within the education department the state archives. The state archives shall acquire, appraise, preserve either in original or duplicate form, catalog, display, duplicate and make available for reference and use by state officials and others those official records that have been determined to have sufficient historical value or other value to warrant their continued preservation by the state.

6. The state archives may accept records, or copies of records, of a municipal, district or public benefit corporation, providing the records have sufficient historical significance to warrant continued preservation by the state.

10. In addition it shall be the function of the state archives to examine into the condition of the records, books, pamphlets, documents, manuscripts, archives, maps, papers, photographs, microphotographs or other information storage devices regardless of physical form or characteristics kept, filed or recorded in the public offices of the counties, cities, towns, villages or other civil or political subdivisions of the state, and to advise and recommend to officials in those public offices having custody or control over the records and information storage devices hereinbefore described as to making, managing, reproducing, preserving or disposing of those records and devices in their custody or control. The recommendations of the state archives may be enforced by an order issued by a justice of the supreme court upon application of the commissioner of education, either with or without notice to the proper public officer, as such justice may require. Upon request of the chief executive of any city with a population of one million or more, which has boroughs contained therein, the commissioner of education may permit such city or borough to assume the functions mentioned in this subdivision as the responsibility of each such city or county.

Note:

(a) Although subsection 6 allows the State Archives to accept historically valuable local public records, at this time it accepts only microfilm copies of such records. Local officials, however, are encouraged to consult with State Archives personnel regarding the preservation and use of historically valuable records.

(b) In accordance with subsection 10, the State Archives offers local municipalities advisory services in records disposition, preservation, storage facilities, micrographics, and good records management practices in general.

(c) Sections 2 through 5 and 7 through 9 have been omitted because they do not apply to local municipalities.

1.2 DEFINITION OF PUBLIC RECORDS

EDUCATION LAW, SECTION 144. DEFINITION OF PUBLIC RECORDS

Sec. 144. Definition of public records. 1. The words "public records" as used in this chapter shall, unless a contrary intention clearly appears, mean any book, paper, map, photograph, microphotograph or other information storage device regardless of physical form or characteristic which is the property of the state or of any state agency, department, division, board, bureau, commission, county, city, town, village, district or any subdivision thereof by whatever name designated in or on which any entry has been made or is required to be made by law, or which any officer or employee of any of said bodies has received or is required to receive for filing.

2. All public records inscribed by public officials for permanent preservation, other than maps, shall be made, entered or recorded in durable ink on paper durably made and well finished. When public officials make or record public records for permanent preservation by microphotography the microfilm shall conform to archival standards.

Opinions and Decisions

"In the absence of specific statutory authority, public records, as such, may not be destroyed. Whether a particular paper or record is a public record should be determined in accordance with statutory definition." (1948 Opinions of Attorney General Aug. 11)

The attorney general also states in the above opinion that the purpose of Section 144 is to "expand the normal notion of what is a public record in order to safeguard all records used in public administration, thus avoiding the possible destruction of important papers and records by arbitrary determination . . ."

1.3 SAFEGUARDING OF PUBLIC RECORDS

EDUCATION LAW, SECTION 146. SAFEGUARDING OF PUBLIC RECORDS

Sec. 146. Safeguarding of public records. Every person who has the custody of any public record books of a county, city, town or village shall, at its expense, cause them to be properly and substantially bound. He shall have any such books which may have been left incomplete, made up and completed from the files and usual memoranda, so far as practicable.

Officers or boards in charge of the affairs of counties, cities, towns and villages shall provide and maintain fireproof rooms, vaults, safes or other fire-resisting receptacles made of noncombustible materials, of ample size for the safe-keeping of the public records in their care, and shall furnish such rooms with fittings of only noncombustible material, the cost to be a charge against such county, city, town or village. All such records shall be kept in the buildings in which they are ordinarily used, and so arranged that they can be conveniently examined and referred to. Such records may be stored in such other fire resistant and otherwise suitable place as may be approved for such purpose by the commissioner of education. When not in use they shall be kept in the vaults, safes or other fire resisting receptacles provided for them; except that they may be removed from their regular place of use or storage for the purpose of repair, restoration or necessary reproduction.

Note:

(a) The part of this law which stipulates that a record custodian of a local municipality should have records "substantially bound," also extends to the binding repair or other restoration measures of historically or otherwise important bound records.

(b) In requiring local records to be stored in a "suitable place," this law refers to protection from other hazards such as excessive moisture or dryness, direct sunlight, dirt and dust, vermin, theft, abusive use, and flooding as well as fire.

(c) The State Archives is responsible for both advising local officials on the proper storage of records and approving the plans for the construction or purchase of vaults or other record storage facilities. Public officials who have questions concerning records protection are urged to consult the State Archives.

Opinions and Decisions

(a) "The Education Law (§ 146, 150) places upon the town board the duty of providing and maintaining fireproof structures for the safekeeping of public records.... The town board's judgment, if fairly and reasonably exercised, is final and conclusive." (Glezen v. Town Board of Richford. (1948) 192 Misc. 658, 81 NYS 2d 236.)

In this case citizens of a town brought action against a town board for passing a resolution authorizing the construction of a fire resistant facility for the storage of town records. The citizens wanted a town referendum on the matter. The court decided that, since the protection of town records was the town board's responsibility, in the absence of evidence that the existing record storage facilities were adequate, the town board's decision on matters of record protection was final.

(b) "Town records must be kept in the town clerk's office and within the town."
(1978 Opinions of Attorney General, March 30)

(c) "Town records must be kept in fire resistant receptacles approved by [the State] Education Department."
(1946 Opinions of State Comptroller, File #1235)

In this opinion the State Comptroller cites Education Law Section 1196, now Section 146, to answer a question and recommends if there are any further questions the individual should directly contact the State Education Department.

(d) "Conclusions: (1) the decision as to the location of the town clerk's office and the accompanying town public records is for determination by the town board. (2) Proposed receptacle of town public records is subject to inspection and approval by the Division of Archives and History [now State Archives] of the Department of Education." (1968 Opinions of State Comptroller, File #1000).

(e) "The supervisor may not remove the books, papers and records of his predecessor from the town clerk's office."
(1945 Opinions of State Comptroller, File #1029)

The emphasis here is on the fact that according to Education Law Section 1196, now Section 146, the records must be kept in the buildings in which they are ordinarily used, and so arranged that they can be conveniently examined and referred to.

(f) "Civil and criminal docket books of town justice of peace are public records. Loose-leaf books may be used if the pages are consecutively numbered and if they may be properly and substantially bound when completed."
(1953 Opinions of State Comptroller, File #6080)

(g) "Duty of determining adequacy of facilities for storage of public records of [a] village of [the] first class rests with [the] village board, and if fairly and reasonably exercised will not be disturbed by a court, but determination that the basement of [the] village treasurer conformed to specification of statute concerning safeguarding of public records was unreasonable."
(Chambers v. Kent. (1960, Sup) 201 NYS 2d 439.)

1.4 RECORDS PROTECTION IN TOWNS AND VILLAGES

TITLE 8 OF THE OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK

185.8 Records protection in towns. The following records of a town, including similar records of all improvement, fire and fire protection districts and special boards, must be kept in a records safe, vault or insulated records container approved by the Office of State History:

(a) minutes and proceedings from organization of the town, districts and boards to and including current minutes and proceedings;

(b) supervisors' accounts and district accounting records, current or unaudited by the State Comptroller;

(c) tax rolls containing warrant to collect and record of collection for current and previous 10 years;

(d) tax sale records;

(e) special franchises, applications, transcripts of hearings, etc.;

(f) special franchise valuations as fixed by State Department of Taxation and Finance for current and two previous years;

(g) highway designation, determination, description, and acceptance books and papers;

(h) all original maps and surveys;

(i) records of school district boundaries, including maps;

(j) oaths of current and previous officers;

(k) bonds of officers currently in effect;

(l) election material less than one year old, the preservation of which is required by section 125 of the Election Law;

(m) justices' docket books less than 10 years old;

(n) jury lists for current and previous two years;

(o) deeds relating to town, improvement district, fire district, and fire protection district property;

(p) insurance policies in force and related inventories pertaining to town, improvement district, fire district and fire protection district property;

(q) all records of births, marriages and deaths;

(r) census records;

(s) records relating to outstanding indebtedness;

(t) any town records dated prior to 1875.

185.9 Records protection in villages. The following records of a village, including similar records of all municipal commissions and boards, must be kept in a safe, vault or insulated records container approved by the Office of State History.

(a) minutes and proceedings from organization of the village, commission or board to and including current minutes and proceedings;

(b) incorporation papers;

(c) treasurers' accounts and commission and board accounting records, current or unaudited by the State Comptroller;

(d) tax rolls containing warrant to collect and record of collection for current and previous 10 years:

(e) tax sale records;

(f) special franchises, applications, transcripts of hearings, etc.;

(g) special franchise valuations as fixed by the State Department of Taxation and Finance for current and two previous years:

(h) street designation, determination, description, and acceptance books and papers;

(i) all original maps and surveys;

(j) oaths of current and previous officers;

(k) bonds of officers currently in effect;

(l) election material less than one year old, the preservation of which is required by section 125 of the Election Law;

(m) police justices' docket books less than 10 years old;

(n) jury lists for current and previous two years;

(o) deeds relating to village, municipal commission and municipal board property;

(p) insurance policies in force and related inventories pertaining to village, municipal commission and municipal board property;

(q) all records of births and deaths;

(r) census records;

(s) records relating to outstanding indebtedness;

(t) any village records dated prior to 1875.

Note:

Responsibility for the approval of records safes, vaults and insulated records containers has been assigned to the State Archives by Education Law, section 142. Sections 185.1 through 185.7 are included in Part II of this pamphlet.

1.5 PENALTY FOR NEGLECT OR REFUSAL

EDUCATION LAW, SECTION 150. PENALTY

Sec. 150. Penalty. A public officer who refuses or neglects to perform any duty required of him by this chapter or to comply with a recommendation of the commissioner of education under the authority of part three of this article, shall for each month of such neglect or refusal, be punished by a fine of not less than twenty dollars.

Note:

"Part three" and "this chapter" as cited above refer to sections 140-150 of the Education law.

1.6 TAMPERING WITH PUBLIC RECORDS

PENAL LAW, SECTION 175.20. TAMPERING WITH PUBLIC RECORDS IN THE SECOND DEGREE

Sec. 175.20 Tampering with public records in the second degree.

A person is guilty of tampering with public records in the second degree when, knowing that he does not have the authority of anyone entitled to grant it, he knowingly removes, mutilates, destroys, conceals, makes a false entry in or falsely alters any record or other written instrument filed with, deposited in, or otherwise constituting a record of a public office or public servant.

Tampering with public records in the second degree is a Class A misdemeanor.

PENAL LAW, SECTION 175.25. TAMPERING WITH PUBLIC RECORDS IN THE FIRST DEGREE

Sec. 175.25 Tampering with public records in the first degree.

A person is guilty of tampering with public records in the first degree when, knowing that he does not have the authority of anyone entitled to grant it, and with intent to defraud, he knowingly removes, mutilates, destroys, conceals, makes a false entry in or falsely alters any record or other written instrument filed with, deposited in, or otherwise constituting a record of a public office or public servant.

Tampering with public records in the first degree is a class D felony.

1.7 DUTIES OF LOCAL HISTORIAN

EDUCATION LAW, SECTION 149. DUTIES OF LOCAL HISTORIAN

Sec. 149. Duties of local historian. It shall be the duty of each local historian, appointed as provided in the last section, in cooperation with the state historian, to collect and preserve material relating to the history of the political subdivision for which he or she is appointed, and to file such material in fireproof safes or vaults in the county, city, town or village offices. Such historian shall examine into the condition, classification and safety from fire of the public records of the public offices of such county, city, town or village, and shall call to the attention of the local authorities and the state historian any material of local historic value which should be acquired for preservation. He or she shall make an annual report, in the month of January, to the local appointing officer or officers and to the state historian of the work which has been accomplished during the preceding year. He or she shall, upon retirement or removal from office, turn over to the local county, city, town or village authorities, or to his or her successor in office, if one has been then appointed, all materials gathered during his or her incumbency and all correspondence relating thereto. It shall be the duty of the county historian to supervise the activities of the local historians in towns and villages within the county in performing the historical work recommended by the state historian, and also to prepare and to present to the board of supervisors a report of the important occurrences within the county for each calendar year. The state historian, at regular intervals, not less than once a year, shall indicate to the local historians the general lines along which local history material is to be collected.

Note:

Additional information on the appointment and duties of a local historian can be obtained by contacting:

New York State Education Department
Historical and Anthropological Services
Room 3097
Cultural Education Center
Albany, NY 12230

Telephone 518-474-5375

PART II - LAWS GOVERNING DISPOSITION OF LOCAL PUBLIC RECORDS

2.1 THE DISPOSAL OF LOCAL PUBLIC RECORDS WHOSE DISPOSITION IS UNDER THE JURISDICTION OF THE COMMISSIONER OF EDUCATION

EDUCATION LAW, SECTION 147. DESTRUCTION OF PUBLIC RECORDS

Sec. 147. Destruction of public records. 1. No officer of any county, city, town or village or other political division of the state shall destroy, sell or otherwise dispose of any public record, original or copied, or any archives, in his care or custody or under his control, and which are no longer in current use, without first having advised the commissioner of education of their nature and obtained his consent.

2. The provisions of this section shall not apply to:

a. The records of any city with a population of one million or more, and the records of any county contained therein, so long as the destruction of the records of such city or county shall be carried out in accordance with the procedure prescribed by any existing law exclusively applicable to the destruction of the records of such city or county. If any such law shall be amended by local law after the first day of July, nineteen hundred fifty-one, the provisions of this section shall not apply to the destruction of such records if the procedures therefor established by such law, as amended by local law, shall be acceptable to the commissioner of education.

b. The records of any state department, division, board, bureau, commission or other agency.

c. The records of any court.

d. Any record required to be destroyed in the manner provided by section 63.10 of the local finance law.

e. The records of any public corporation which have not been retained for the longest minimum period of time required:

(1) by rules and regulations of the commissioner of education; or

(2) by any agency of the state so that it may properly carry out its assigned duties and responsibilities; or

(3) because of any provision of law.

Note:

Education Law, section 147 has been divided in this manual, with paragraphs 1 and 2 being found in Part II and paragraph 3 being found in Part III. Since paragraphs 1 and 2 are concerned with disposition of public records in general and paragraph 3 with disposition of public records that have been microphotographed, it was considered appropriate to separate this law according to the respective categories.

Opinions and Decisions

(a) "In the absence of specific statutory authority, public records, as such may not be destroyed. Whether a particular paper or record is a public record should be determined in accordance with statutory definition."
(1948 Opinions of Attorney General, Aug. 11).

(b) "Consent of the Commissioner of Education is necessary before hospital records can be destroyed."
(1946 Opinions of Attorney General, Jan. 3).

In this opinion the Attorney General states that the definition of public records is, "considerably broader than the usual conception of public records and comprehends records kept by public officers or institutions, even though such records are not ordinarily available to the public; and that the consent of the Commissioner of Education is a condition prerequisite to such destruction. . . ."

(c) "The records of a county probation agency are county records subject to destruction pursuant to Public Officers Law, section 65-b and Education Law, section 147."
(1975 Opinions of Attorney General, Sept. 10).

In this opinion the Attorney General cites the fact that when county probation departments were subject to the Court of Special Sessions a court order was necessary before records could be disposed. Since the enactment of section 256 of the Executive Law in 1971, however, county probation agencies have been part of the executive branch of their respective county governments. The records of these agencies are now subject to disposal policies pursuant to Public Officers Law, section 65-b and Education Law, section 147.

PUBLIC OFFICERS LAW, SECTION 65-b. DESTRUCTION OF PUBLIC RECORDS

Sec. 65-b. Destruction of public records. 1. Any public officer of any public corporation notwithstanding the provisions of any general, special or local law, except as hereinafter provided, may destroy, sell or otherwise dispose of any or all records, papers or documents kept by him provided he:

a. advises the commissioner of education of the nature of the record; and

b. certifies to the commissioner of education that such record no longer has sufficient administrative, fiscal or legal value to warrant its continued retention, and that the disposition of such record has been authorized by resolution of the governing body of the public corporation of which he is an officer; and

c. furnishes the commissioner of education, when he so requests, with affidavits from the responsible legal and/or fiscal officer of the public corporation of which he is an officer that the record no longer has sufficient legal or fiscal value to warrant its continued retention; and

d. receives the consent of the commissioner of education to the destruction, sale or other disposition of such record.

2. The consent of the commissioner of education to the destruction, sale or other disposition of any record, paper or document of any public corporation shall be issued only in accordance with rules and regulations established by him after consultation with state departments and agencies having an interest in retaining said record for the purpose of carrying out their assigned duties and responsibilities.

3. The provisions of this section shall not apply to: the records of any city with a population of one million or more, and the records of any county contained therein, so long as the destruction of the records of such city or county shall be carried out in accordance with the procedure prescribed by any existing law exclusively applicable to the destruction of the records of such city or county. If any such law shall be amended by local law after the first day of July, nineteen hundred fifty-one, the provisions of this section shall not apply to the destruction of such records if the procedures therefor established by such law, as amended by local law, shall be acceptable to the commissioner of education.

4. The provisions of this section shall not apply to:

a. The records of any state department, division, board, bureau, commission or other agency.

b. The records of any court.

c. Any record required to be destroyed in the manner provided by section 63.10 of the local finance law.

d. The records of any public corporation which have not been retained for the longest minimum period of time required: (1) by the federal government; or (2) by rules and regulations of the commissioner of education; or (3) by any agency of the state so that it may properly carry out its assigned duties and responsibilities; or (4) because of any provision of law.

Note:

(a) Numbers 5 and 6 of this section are omitted, as these two subsections relate only to chattel mortgages, conditional sale contracts and the related indices. The enactment of the Uniform Commercial Code, effective September 27, 1964, terminated the filing of these security instruments.

(b) The term "public records" as used in this law is defined in the Education Law, section 144 (see section 1.2).

(c) See Regulations of the Commissioner of Education, Part 185, Records of Public Corporations Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York for procedures implementing the provisions of this law. These regulations follow.

Opinions and Decisions

(a) "The records of a county probation agency are county records subject to destruction pursuant to Public Officers Law, section 65-b and Education Law, section 147."
(1975 Opinions of Attorney General, Sept. 10)

(b) "It is our opinion that for purposes of their destruction the records of the medical examiner are "public records" [as opposed to "court records"] within the meaning of the Education Law and Public Officers Law."
(1978 Opinions of Attorney General, July 19)

The records of the medical examiner therefore are disposed of in accordance with Public Officers Law, section 65-b not Judiciary Law, section 89.

PART 185 OF TITLE 8 OF THE OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK

RECORDS OF PUBLIC CORPORATIONS

section 185.1 Definitions

section 185.2 Establishing records retention periods

section 185.3 Consultation with State agencies

section 185.4 Commissioner's consent to be withheld

section 185.5 Distribution of records retention and disposition schedules

section 185.6 Disposition of records

section 185.7 Records not subject to disposition

Note:

(a) These regulations, which establish the actual procedures involved in the disposition of public records, implement the provisions of Public Officers Law, section 65-b.

(b) Records retention and disposition schedules for various local public offices are available from the State Archives, Local Records Section.

(c) Sections 185.8 and 185.9 are included in Part I of this pamphlet.

Section 185.1 Definitions. As used in this Part:

(a) Public corporation includes a municipal corporation and a district corporation.

(b) (1) Municipal corporation includes a county, city, town, village.

(2) For the purposes of this Part only, municipal corporation includes a school district.

(c) District corporation includes any territorial division of the State, other than a municipal corporation, heretofore or hereafter established by law which possesses the power to contract indebtedness and levy taxes or benefit assessments upon real estate or to require the levy of such taxes or assessments, whether or not such territorial division is expressly declared to be a body corporate and politic by the statute creating or authorizing the creation of such territorial division.

(d) Retention period refers to the minimum period of time which must elapse before a record is eligible for disposition.

(e) Records retention and disposition schedule refers to a list of records and their retention periods which is provided by the commissioner to a public officer of a public corporation.

(f) Record refers to any book, paper, map, photograph, microphotograph or other information storage medium regardless of physical form or characteristic kept by a public officer of a public corporation.

(g) Disposition refers to the disposition by destruction, sale or other means of a public record kept by a public officer of a public corporation.

(h) State agency includes departments, divisions, boards, bureaus, commissions, authorities and other bodies assigned administrative functions of State government by the Legislature, except public benefit corporations and temporary commissions of the Legislature.

185.2 Establishing records retention periods. The commissioner will establish a retention period for the records kept by any public officer of any public corporation. When establishing records retention periods, the commissioner will take into account the longest period of time required by the Federal government; or by any State agency so that it may properly carry out its assigned duties and responsibilities; or because of any provision of law. Consideration will also be given to any administrative, legal, fiscal, research, historical or educational value of the information contained in such records.

185.3 Consultation with State agencies. Lists of proposed retention periods will be forwarded by the commissioner to State agencies for comment. A proposed retention period will become effective if no State agency notifies the commissioner in writing within 30 days that the proposed retention period interferes with that agency's assigned duties and responsibilities.

185.4. Commissioner's consent to be withheld. The consent of the commissioner to the disposition of any record kept by any public officer or any public corporation will be withheld at the request of any State agency, although said record has been kept for the longest minimum period of time normally required by the Federal government or by any State agency or because of any provision of law.

185.5 Distribution of records retention and disposition schedules. A records retention and disposition schedule indicating retention periods for records kept by a public corporation may be obtained by each county, city, town, village, school district and other public corporation upon request to the commissioner.

185.6 Disposition of records. Consent of the commissioner to the destruction, sale or other disposition of records is granted to any public officer when the following provisions have been fulfilled:

(a) records have been held a sufficient time to satisfy their retention periods as prescribed in the records retention and disposition schedule;

(b) certification has been filed with the commissioner that:

(1) such records no longer have sufficient administrative, fiscal or legal value to warrant their continued retention;

(2) the governing body by resolution has authorized disposition of records by adopting the retention periods set forth in the appropriate records retention and disposition schedule.

(c) records of common school district delivered to a district superintendent under provisons of subdivision (m) of section 170.1 of this Chapter may be destroyed by the district superintendent after the established retention period set forth in a records retention and disposition schedule for that purpose.

185.7 Records not subject to disposition. Pursuant to section 65-b of the Public Officers Law the commissioner will not consent to the disposition of records containing information of any administrative, legal, fiscal, research, historical or educational value which warrants their permanent retention. These shall include, but not be limited to, the following:

(a) incorporation and dissolution certificates of municipal and district corporations;

(b) official minutes of the legislative body of municipal and district corporations and the boards and agencies thereof;

(c) original official copies of local laws, ordinances, rules and regulations of municipal and district corporations and the boards and agencies thereof;

(d) oath books and registers of official signatures of the public officers of municipal and district corporations and the boards and agencies thereof;

(e) official copy of annual or special reports filed with the governing body of municipal and district corporations by officers, boards and agencies thereof;

(f) documents recording the official acquisition, sale, transfer, or mortgage of public or private real property;

(g) official maps, surveys and reports on boundaries indicating the legal location of public or private real property;

(h) official birth, death and marriage records filed with municipal corporations;

(i) warrant copy of tax roll of municipal and district corporations except school districts.

2.2 DISPOSITION OF CANCELED OBLIGATIONS

LOCAL FINANCE LAW, SECTION 63.10. CANCELLATION OF OBLIGATIONS

Sec. 63.10 Cancellation of obligations. When obligations are paid, notwithstanding the provisions of any other general, special or local law or of article forty-six of the education law relating to public records, they shall be cancelled or destroyed in such manner as the state comptroller shall prescribe by a rule or order to be filed in his office and in such other offices as he may designate.

Opinions and Decisions

(a) "Consent of State Comptroller or Commissioner of Education not required for destruction of obligations."
(1949 Opinions of State Comptroller, File #3697)

Here the State Comptroller states that obligations are bonds or notes.

(b) "School district bonds may be destroyed after payment and cancellation, except that registered obligations should be preserved for a period of six years after that date. . . . Canceled coupon bonds and coupons, however, should be preserved for examination by the Department [of Audit and Control]."
(1956 Opinions of State Comptroller, File #7954)

(c) "The Local Finance Law states that when obligations are paid, notwithstanding the provisions of any other general, special, or local law or of section 147 of the Education Law relating to public records, they must be canceled or destroyed in such manner as the state comptroller shall prescribe by rule or order to be filed in his office and in such other offices as he may designate."
(48 New York Jurisprudence, p. 93, Public Securities and Obligations §92.)

PART 55 OF TITLE 2 OF THE OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK

CANCELLATION AND DESTRUCTION OF OBLIGATIONS OF MUNICIPALITIES, SCHOOL DISTRICTS AND DISTRICT CORPORATIONS

Section 55.1 Cancellation of paid obligations. Bonds, corporate stock, notes, coupons, or other evidences of indebtedness issued pursuant to the Local Finance Law or any other law, when paid, shall be cancelled in either of the following ways:

a. by perforating the obligation with the word "Paid", or with the word "Cancelled", or the substantial equivalent of either word, and with words or numbers which will indicate the date of payment. Beneath such perforations and upon the face of the obligation shall be (1) subscribed in ink the name and title of the chief fiscal officer of the issuer or his duly delegated deputy, or the name and title of an officer of the paying agent of the issuer, or (2) a perforated abbreviation of the name of the municipality, school district or district corporation, such as "C of NY".

b. by writing or stamping in ink the word "Paid" together with the date of payment upon the face of the obligation. Beneath such writing or stamp shall be subscribed in ink the name and title of the chief fiscal officer of the issuer, or his duly delegated deputy, or the name and title of an officer of the paying agent of the issuer. If this method is used, the signature or signatures of the officer or officers upon the obligation shall be cut or torn from the canceled obligation.

55.2 Destruction of cancelled obligations. Bonds, corporate stock, notes, coupons, or other evidences of indebtedness issued pursuant to the Local Finance Law or any other law, when paid, may be destroyed, after prior cancellation, by the burning, pulverizing or shredding of such obligations by the chief fiscal officer of the issuer or by his duly delegated deputy or by a duly authorized paying agent, except that registered obligations shall not be destroyed until six years after the date of payment. Such destruction, whether by burning, pulverizing or shredding, shall be effected in such a manner as will render reproduction of such obligations in their original form impossible.

55.3 Destruction of obligations by registration agents. A registration agent may destroy bonds, corporate stock, notes and coupons when necessary to comply with the provisions of title 5 of article 2 of the Local Finance Law. Such destruction shall be accomplished by any of the following methods:

a. by burning, pulverizing or shredding the obligations.

b. by perforating the obligation with the word "Void" or with the word "Cancelled", or the substantial equivalent of either word, and with words or numbers which will indicate the date upon which the obligation was rendered void. Beneath such such perforations and upon the face of the obligations shall be (1) subscribed in ink the name and title of the registration agent of the issuer or his duly delegated deputy, or the name and title of an officer of the bank or trust company acting as registration agent of the issuer, or (2) a perforated abbreviation of the name of the municipality, school district or district corporation, such as "C of NY".

c. by writing or stamping in ink the word "Void" upon the face of the obligations. Beneath such writing or stamp there shall be written or stamped in ink the date upon which the obligation was rendered void. Beneath such word and date there shall be subscribed in ink the name and title of the registration agent of the issuer or his duly delegated deputy or the name and title of an officer of a bank or trust company acting as a registration agent of the issuer. If this method is used the signature or signatures of the officer or officers upon the obligation shall be cut or torn from the destroyed obligation.

55.4 Cancellation of coupons by counties or cities. Notwithstanding the provisions of paragraphs 1 and 3 of this Order, any county or city may cancel paid coupons or may destroy unpaid coupons by perforating the coupon in two places with holes approximately three-sixteenths of an inch in diameter. One of such perforations shall be through the signature and the other through the dollar amount.

55.5 Burning, pulverizing or shredding of obligations. Should obligations be destroyed in the manner set forth in subdivision (b) or (c) of paragraph 3 of this Order, or in the manner set forth in paragraph 4 of this Order, they shall be burned, pulverized or shredded within one year from the date of such destruction.

55.6 Records to be kept. A record shall be kept by each chief fiscal officer, registration agent and paying agent of all obligations canceled or destroyed by them, respectively, which record shall properly describe the obligation cancelled or destroyed and state the date of such cancellation or destruction.

55.7 Use of facsimile signature. Any officer required by this order to subscribe his name upon an obligation which is to be cancelled or destroyed may use, in lieu of an actual signature, a stamp or other device which will produce in ink a facsimile signature of such officer.

55.8 Cancellation and destruction of partially destroyed or defaced obligations. When new bonds, corporate stock, notes or coupons are to be reissued pursuant to the provisions of section 164.00 of the Local Finance Law, to replace a partially destroyed or defaced obligation, there shall be written or stamped in ink upon the face of the obligation, if possible, or if not possible then upon a paper attached to the obligation, the following words: "Void. New

obligation issued pursuant to section 164.00 of the Local Finance Law on ..... 19..". The chief fiscal officer, or his duly designated deputy, shall subscribe his name and title to such statement. Such partly destroyed or partly defaced obligation shall not be destroyed until six years after the payment of the new obligation issued in lieu thereof, at which time the destruction shall be by burning.

55.9 Effective date. This order shall take effect immediately and shall be filed in the Department of Audit and Control and a duplicate original copy hereof shall be filed in the Department of State.

2.3 DISPOSITION OF COURT RECORDS

JUDICIARY LAW, SECTION 89. DISPOSITION OF RECORDS, BOOKS AND PAPERS

Sec. 89. Disposition of records, books and papers. 1. (a) Nothwithstanding any other provisions of law except as hereinafter provided, the justices of the appellate division of the supreme court in each judicial department may, by order, direct the county clerk of any county within the judicial department, or the commissioner of jurors of any county within the judicial department, or the court clerk of any court within the judicial department or any judge or other person having custody of the records of such court, to destroy, sell or otherwise dispose of any court records, books or papers, now or hereafter deposited, on file, compiled or of record in his office, the rentention of which in the opinion of the justices of the appellate division would serve no legal, practical or useful purpose. However, the following records, books and papers may not be disposed of pursuant to this section unless a permanent record by microphotography is first made thereof and permanently retained together with proper indices:

(1) judgment rolls less than twenty-five years old regardless of the nature of the action or proceedings;

(2) judgment rolls and other records, books and papers less than fifty years old which affect the marital rights or status or the custody or lineage of any person, or the mental illness or the sanity or competency of any person; and

(3) judgment rolls regardless of their age which affect the title to real property.

(b) The justices of the appellate division in each judicial department may adopt, amend or rescind rules permitting similar disposition of the records, books and papers, the disposition of which is authorized by subdivision one of this section, periodically and without any further order of said justices.

(c) The custodian of the records, books and papers sought to be destroyed may apply to the justices of the appellate division for an order or rule authorized by this section. The application shall be based (1) upon an affidavit which shall identify the records, books and papers sought to be disposed of and which shall set forth the facts pertinent to the requested disposition and (2) if required by the justices of the appellate division, upon the written consent of any state or local department or agency having an interest in the retention of such records, books and papers.

(d) This subdivision shall not apply to the records, books and papers of any court, the disposition of which is otherwise specifically provided for by any other statute.

2. Notwithstanding any other provisions of law, the justices of the appellate division of the supreme court in each judicial department may on application of the district attorney of any county within its judicial department, direct, by order, that he destroy, sell or otherwise dispose of or cause to be destroyed, sold or otherwise disposed of any records, books or papers in his care or custody or under his control which are more than twenty-five years old and are no longer in current use, the retention of which in the opinion of the justices of the appellate division would serve no legal, practical or useful purpose, except permanent records of criminal cases, printed and bound volumes of cases on appeal and original indictments. The justices of the appellate division as a condition of such disposition may require the written consent of any state or local department or agency having an interest in such records, books or papers.

Opinions and Decisions

"Application for an order directing the destruction of certain public records, pursuant to section 89 of the Judiciary Law, denied without prejudice to renewal of the application, upon which renewed application all the pertinent facts should be set forth in an affidavit and not merely in part by unsworn letters."
(Application of Phesay, (1955) 286 App. Div. 1097, 145 NYS 2d 812.)

The Supreme Court, Appellate Division, held that application to the court for an order directing the destruction of public records must be supported by a sworn affidavit setting forth all the pertinent facts.

2.4 DISPOSITION OF STATE RECORDS IN LOCAL OFFICES

STATE FINANCE LAW, SECTION 186. PRESERVATION OR DISPOSAL OF STATE RECORDS

Sec. 186. Preservation or disposal of state records. Notwithstanding any other provisions of law, the commissioner of general services shall have power:

1. To authorize or require the disposal or destruction of state records including books, papers, maps, photographs, microphotographs or other documentary materials made, acquired or received by any state department, division, board, bureau, commission or other agency. At least forty days prior to the proposed disposal or destruction of such records, the commissioner of general services shall deliver a list of the records to be disposed or destroyed to the director of the division of the budget, the commissioner of education, the attorney general and the comptroller. No state records listed therein shall be destroyed if within thirty days after receipt of such list the commissioner of education, the attorney general, the director of the budget or the comptroller shall notify the commissioner of general services that in his opinion such state records should not be destroyed.

2. To authorize or require the transfer of noncurrent state records from the office of origin to depositories designated by the commissioner of general services.

3. To inquire into the condition, character, amount and method of keeping such records and to require special reports regarding such records as he may deem necessary.

4. To promulgate rules and regulations to carry out the purposes of this article.

Note:

This law governs the disposition of records in local public offices when such records are determined to be state records. Such state records include the records of a county board of elections and motor vehicle records in a county clerk's office.

Opinions and Decisions

(a) "The records and papers kept by county clerks in the performance of their functions as agents of the Commissioner of Motor Vehicles are state records. Their destruction or other disposition can be authorized only in accordance with this Section." (1953 Opinions of Attorney General, May 14)

(b) "Records of local A. [Alcoholic] B. [Beverage] C. [Control] Boards are State records subject to provisions of this section." (1955 Opinions of Attorney General, June 29)

PART III - LAWS GOVERNING THE MICROFILMING OF LOCAL PUBLIC RECORDS

3.1 LEGAL STATUS OF MICROFORM COPIES OF ORIGINAL RECORDS

GENERAL MUNICIPAL LAW, SECTION 51-a. REPRODUCTION OF RECORDS ON FILMS AND DESTRUCTION OF RECORDS SO REPRODUCED

Sec. 51-a. Reproduction of records on films and destruction of records so reproduced.

1. The head of any department, commission or board of a municipal corporation may cause any or all records kept by him or it, to be photographed, microphotographed or reproduced on film. Such photographic film shall be of durable material and the device used to reproduce such records on such film shall be one which accurately reproduces the original record in all details.

2. Such photographic film shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. A transcript, exemplification or certified copy thereof shall, for all purposes recited herein, be deemed to be a transcript, exemplification, or certified copy of the original.

3. Whenever such photographs or microphotographs or reproductions on films shall be placed in conveniently accessible files and provisions made for preserving, examining and using the same, the said head of a department, commission or board may certify those facts to the head of such municipal corporation who shall have the power to authorize the destruction, sale, or other disposition of such records or papers, provided the consent of the commissioner of education is obtained pursuant to section one hundred forty-seven of the education law.

Opinions and Decisions:

(a) Federal statute also recognizes microforms of original records produced "in the regular course of business. . . . as admissible in evidence as the original itself in any judicial or administrative proceeding. . . ." (28 USCS §1732). In order to qualify as produced "in the regular course of business," microfilmed records must be (1) kept pursuant to some routine procedure designed to assure their accuracy, (2) created for motives that would tend to assure accuracy (preparation for litigation, for example, is not such a motive), (3) records must not themselves be mere cumulations of hearsay or uninformed opinion (see United States v Brown (1977, CA5 Fla) SS1 F 2d. 639, on reh (CA5 Fla) 569 F 2d 236).

(b) "With the consent of the Commissioner of Education, public records may be microphotographed and destroyed and the film reproduction shall be deemed an original for all purposes." (1955 Opinions of State Comptroller, File #7101)

PUBLIC OFFICERS LAW, SECTION 65-a. PUBLIC RECORDS; REPRODUCTION OF RECORDS ON FILMS AND DESTRUCTION THEREOF

Sec. 65-a. Public records; reproduction of records on films and destruction thereof. 1. Any public officer of the state may cause any or all records, papers or documents kept by him to be photographed, microphotographed or reproduced on film. Such photographic film shall be of durable material and the device used to reproduce such records on such film shall be one which accurately reproduces the original thereof in all details.

2. Such photographs, microphotographs or photographic film shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. A transcript, exemplification or certified copy thereof shall, for all purposes recited herein, be deemed to be a transcript, exemplification, or certified copy of the original.

3. Whenever such photographs, microphotographs or reproductions on film shall be placed in conveniently accessible files and provisions made for preserving, examining and using the same, any such public officer may certify those facts to the head of the department, commission or board involved who shall have the power to authorize the destruction, sale to a historical, educational or scientific organization or municipal corporation, or other disposition of such records, papers or documents, provided the consent of the commissioner of education is obtained pursuant to section one hundred forty-seven of the education law.

Opinions and Decisions

"With the consent of the Commissioner of Education, public records may be microphotographed and destroyed and the film reproduction shall be deemed an original for all purposes." (1955 Opinions of State Comptroller, File #7101)

3.2 DISPOSITION OF ORIGINAL RECORDS THAT HAVE BEEN MICROFILMED

EDUCATION LAW, SECTION 147. DESTRUCTION OF PUBLIC RECORDS (SUBSECTION 3)

3. Notwithstanding the provision of subdivision two of this section, the commissioner of education shall have power to consent to the disposition of records of a public corporation which have not been retained for the longest minimum period of time required by rules and regulations of the commissioner of education, by any agency of the state, or because of any provision of law, provided that such records have been photographed, microphotographed, or reproduced on film, in accordance with section fifty-one-a of the general municipal law or section sixty-five-a of the public officers law.

Note:

Subsections 1 and 2 of Education Law, section 147 and additional notes and opinions and decisions can be found in section 2.1.

Opinions and Decisions

"With the consent of the Commissioner of Education, public records may be microphotographed and destroyed and the film reproduction shall be deemed an original for all purposes." (1955 Opinions of State Comptroller, File #7101)

PART IV - SELECTED LAWS RELATING TO CUSTODY OF LOCAL PUBLIC RECORDS

4.1 COUNTIES

COUNTY LAW, SECTION 208. BOOKS AND RECORDS

Sec. 208. Books and records. 1. The board of supervisors of each county shall have the general charge of all records, books, maps and papers of the county, subject to such right of custody of a county officer as may be directed or authorized by law and shall make adequate provision for their safekeeping, repair and maintenance.

2. Each county officer shall have custody and control of all records, books, maps or other papers, required or authorized by law to be recorded, filed or deposited in his office; all other records, books, maps or papers shall be in the custody and control of such officer as the board of supervisors shall designate. It shall be the duty of each such officer to keep and preserve the same. No such record, book, map or other paper, shall be sold, destroyed or otherwise disposed of, except pursuant to law.

3. Whenever any public record, book, map or paper has become obliterated or unfit for further public inspection and use, the board of supervisors, upon a certificate of the county judge or a supreme court justice of the judicial district to the effect that transcripts or copies should be made and certified for future public inspection and use, shall direct and provide for such transcripts or copies to be made by the officer having custody thereof. Upon certification by such county judge or supreme court justice that the same have been examined, and the manner, contents and form thereof are approved, such certified transcripts or copies shall be deemed to take the place of the originals for all purposes of public inspection, use and evidence.

4. Except as otherwise provided by law and subject to reasonable rules and regulations of the officer having custody thereof, all records, books, maps or other papers recorded or filed in any county office, shall be open to public inspection, and upon request, copies shall be prepared and certified; and, except where another fee is prescribed by law, such officer upon the payment of a fee of twenty cents for each folio, shall furnish such certified copy. Upon request and after diligent search, if no record be found, such officer shall be entitled to receive a fee of one dollar for certification thereof.

5. In addition to the provisions of the real property law, each board of supervisors, by resolution, may authorize the purchase and installation of equipment to photograph or microphotograph, or otherwise reproduce upon film such records, maps or other papers as may be deemed advisable; and may provide for the purchase of supplies and necessary files for the preservation of the same. When duly certified, such reproduction shall be deemed an original record for all purposes of public inspection, use and evidence; and a transcript, exemplified or certified copy shall for all purposes be deemed such a transcript, exemplified or certified copy of the original. When inconsistent with the use of entry in record books, such record books may be dispensed with. The fee shall be twenty cents for each folio, together with the fee for certification or exemplification thereof.

6. Each officer, so far as practicable, shall complete all incomplete books and records of which he shall have custody and control by signing and certifying such completion in his own name and giving the date thereof. The county clerk shall complete only such records and minutes in actions or proceedings as are ordered completed by the respective county or supreme court having jurisdiction over such action or proceeding.

7. Each officer shall execute and deliver all necessary deeds, releases, discharges, ratifications or other documents and papers to fulfill any duty imposed by law upon his predecessor in office. Any liability of a sheriff resulting from the execution and delivery of a document required by law on behalf of a predecessor in office shall be determined to be the liability of the sheriff during whose term of office the error, mistake or cause of damage arose.

Note:

Pursuant to section 146 of the Education Law (see section 1.3), county records may be stored in buildings other than where they are ordinarily used only with the approval of the Commissioner of Education working through the State Archives.

For further information on location of record storage facilities contact the Local Records Section of the State Archives.

TOWN LAW, SECTION 30. POWERS AND DUTIES OF TOWN CLERK

Sec. 30. Powers and duties of town clerk. The town clerk of each town: 1. Shall have the custody of all the records, books and papers of the town. He shall attend all meetings of the town board, act as clerk thereof, and keep a complete and accurate record of the proceedings of each meeting, and of all propositions adopted pursuant to this chapter. Immediately after adoption he shall enter into a book to be known as the "ordinance book" a copy of every ordinance adopted by the town board, specifying the date of adoption thereof. In addition, he shall act as secretary of the board of commissioners of any improvement district when so designated by such board of commissioners. He shall keep a complete and accurate record in his office as town clerk of all proceedings of every board of commissioners of improvement districts in said town. The town clerk shall record all deeds of conveyances in the office of the clerk of the county in which the property is located and thereafter file the same in the town clerk's office. The cost and necessary expenses incurred in the recording of such deeds in the county clerk's office shall be a town charge.

1-a. Shall enter daily in a suitable book or books a record of all moneys received by him, and shall deposit all such moneys not later than the third business day after the total thereof exceeds the sum of fifty dollars.

2. He shall file all certificates or oaths and other papers required by law to be filed in his office.

Note:

(a) Since subsections 3 through 7 do not pertain to local public records, they have been omitted.

(b) Pursuant to section 146 of the Education Law (see section 1.3) town records may be stored in buildings other than where they are ordinarily used only with the approval of the Commissioner of Education working through the State Archives.

For further information on location of record storage facilities contact the Local Records Section of the State Archives.

Opinions and Decisions

(a) "A town may not construct a building larger than it will need itself in the foreseeable future and rent the surplus space to another town for storage of the records of the other town. Town records must be kept in the town clerk's office and within the town."
(1978 Opinions of Attorney General, March 30)

(b) "Town local laws and town ordinances must be recorded in the Town Clerk's Minute Book, and also recorded separately in the record book of local laws and the record book of local ordinances, which records must be substantially bound."
(1967 Opinions of State Comptroller, File #351)

(c) "The town board may designate the location of the town clerk's office but may not compel the clerk to surrender custody of papers required by law to be filed in his office."
(1971 Opinions of State Comptroller, File #705)

VILLAGE LAW, SECTION 4-402 (FORMERLY SECTION 82) CLERK

Sec. 4-402 Clerk. The clerk of each village shall, subject to the direction and control of the mayor:

a. have custody of the corporate seal, books, records, and papers of the village and all the official reports and communications of the board of trustees;

b. act as clerk of the board of trustees and of each board of village officers and shall keep a record of their proceedings;

c. keep a record of all village resolutions and local laws;

d. prepare, sign and transmit to the village treasurer an order directing the village treasurer to pay the claims therein specified, which order shall contain an abstract of all claims audited and ordered paid by the board of trustees or other board having power to audit, showing the names of the claimants, the amounts approved for payment and the appropriations chargeable therewith. In any village in which the same individual serves as both clerk and treasurer, such order shall be signed by the mayor. A duplicate of such order shall be filed in the office of the village clerk. Except as otherwise provided in section fourteen hundred thirty-eight of the real property tax law, all monies belonging to the village received by such clerk in any month shall be paid to the village treasurer on or before the tenth day of the next succeeding month;

e. shall, during office hours as prescribed by the board of trustees, on demand of any person, produce for inspection the books, records and papers of his office, and shall furnish a copy of any portion thereof, certified in the proper form to be read in evidence, upon payment of his fees therefor, at the rate of twenty cents per folio;

Note:

(a) Since (f) through (i) do not pertain to local public records they have been omitted.

(b) Pursuant to section 146 of the Education Law (see section 1.3), village records may be stored in buildings other than where they are ordinarily used only with the approval of the Commissioner of Education working through the State Archives.

For further information on location of record storage facilities contact the Local Records Section of the State Archives.

Opinions and Decisions

(a) "Minutes of village board meetings may be recorded in loose-leaf book which may be locked permanently when the book is completed."
(1963 Opinions of State Comptroller, File #718)

In this opinion the State Comptroller also stipulates that the pages in said notebook must be consecutively numbered.

(b) "There is no statute which prescribes the hours of opening and closing of the office of village clerk. However, such office must be open at all reasonable hours, subject to reasonable regulation, as may be necessary to adequately and efficiently serve the public."
(1954 Opinions of State Comptroller, File #6703)

Here, the State Comptroller says, the question as to what are "reasonable hours" or "reasonable regulations," would depend upon the circumstances of the particular case. There are specific times when a village clerk's office must be kept open, as for example, to enable the inspection of the assessment roll and the proposed budget and, if he also collects taxes, for the collection of taxes.

VILLAGE LAW, SECTION 19-1906. VILLAGE BOOKS AND RECORDS

Sec. 19-1906 Village books and records. Upon the dissolution of the village, all its records, books and papers shall be deposited with the town clerk of the town in which the principal portion of such village is situated, and they shall thereupon become a part of the records of such town.

4.4 FIRE DISTRICTS

TOWN LAW, SECTION 178. POWERS AND DUTIES OF FIRE DISTRICT SECRETARY

Sec. 178. Powers and duties of fire district secretary. The fire district secretary shall have the custody of all the records, books and papers of the fire district. He shall attend all meetings of the board of fire commissioners, act as clerk thereof, and keep a complete and accurate record of the proceedings of each meeting and of all propositions, rules and regulations adopted pursuant to this article. The fire district secretary shall have such additional powers and perform such additional duties as the board of fire commissioners may determine, not inconsistent with law.

Opinions and Decisions

"The fire district secretary shall have the custody of all the records, books and papers of the fire district." (1946 Opinions of the State Comptroller, File #463)

4.5 JUSTICES' RECORDS

UNIFORM JUSTICE COURT ACT, SECTION 2019-a. JUSTICES' CRIMINAL RECORDS AND DOCKET

The records and dockets of the court except as otherwise provided by law shall be at reasonable times open for inspection to the public and shall be and remain the property of the village or town of the residence of such justice, and at the expiration of the term of office of such justice shall be forthwith filed by him in the office of the clerk of such village or town, provided, however, that if such records and dockets are transferred pursuant to section twenty-hundred twenty-one of the uniform district court act, the responsibility for such records and dockets by the city, village or town shall cease and they shall be the property of the district court to which they are transferred. The record of every criminal action shall state the names of the witnesses sworn and their places of residence, and if in a city, the street and house number; and every proceeding had before him. It shall be the duty of every such justice, at least once a year and upon the last audit day of such village or town, to present his records and docket to the auditing board of said village or town, which board shall examine the said records and docket, or cause same to be examined and a report thereon submitted to the board by a certified public account*, or a public accountant and enter in the minutes of its proceedings the fact that they have been duly examined, and the fines therein collected have been turned over to the proper officials of the village or town as required by law. Any such justice who shall willfully fail to make and enter in such records and docket forthwith, the entries by this section required to be made or to exhibit such records and docket when reasonably required, or present his records and docket to the auditing board as herein required, shall be guilty of misdemeanor and shall, upon conviction, in addition to the punishment provided by law for a misdemeanor, forfeit his office.

Note:

*The original law reads "certified public account." It is assumed it was intended to read "certified public accountant."

Opinions and Decisions

a) "Civil and criminal dockets must be filed in the office of the town clerk upon the resignation or termination of office of a town justice of the peace unless the court is part of a district court system, in which case such filing is with the clerk of the district court."
(1971 Opinions of State Comptroller, File #793)

b) "A town justice is required to turn over both his criminal and civil dockets upon the expiration of his term of office and may not retain such records pending an audit thereof by the Department of Audit and Control."
(1976 Opinions of State Comptroller, File #356)

The Comptroller further points out "that there is no basis for the justice's allegation that he is entitled to retain such records pending an audit by this Department. Neither section 2019-a nor section 2021 provide for such retention pending an audit. Furthermore, there is no necessity for a justice to retain such records pending an audit since, upon the expiration of his term of office, the dockets should be complete and should simply be filed with the town clerk where they will remain pending an audit by representatives of this Department."

4.6 TRANSFER OF CUSTODY OF LOCAL PUBLIC RECORDS UPON CHANGE IN OFFICE

PUBLIC OFFICERS LAW, SECTION 80. DELIVERY OF BOOKS AND PAPERS, MONEY AND PROPERTY

Sec. 80. Delivery of books and papers, money and property. A public officer shall demand from his predecessor in office or any person in whose possession they may be, a delivery to such officer of all books and papers, money and property belonging or appertaining to such office. If such demand is refused, such officer may make complaint thereof to any justice of the supreme court of the district, or to the county judge of the county in which the person refusing resides. If such justice or judge be satisfied that such books or papers, money and property are withheld, he shall grant an order directing the person refusing to show cause before him at a time specified therein, why he should not deliver the same. At such time, or at any time to which the matter may be adjourned, on proof of the due service of the order, such justice or judge shall proceed to inquire into the circumstances. If the person charged with withholding such books or papers, money and property makes affidavit before such justice or judge that he has delivered to the officer all books and papers, money and property in his custody which, within his knowledge, or to his belief belong or appertain thereto, such proceedings before such justice or judge shall cease, and such person be discharged. If the person complained against shall not make such oath, and it appears that any such books or papers, money and property are withheld by him, such justice or judge shall commit him to the county jail until he delivers such books and papers, money and property, or is otherwise discharged according to law. On such commitment, such justice or judge, if required by the complainant, shall also issue his warrant directed to any sheriff or constable, commanding him to search, in the daytime, the places designated therein, for such books and papers, money and property, and to bring them before such justice or judge. If any such books and papers, money and property, are brought before him by virtue of such warrant, he shall determine whether they appertain to such office, and if so shall cause them to be delivered to the complainant.

Opinions and Decisions

(a) "The respondent [a former village clerk] may not assert the existence of a lien for services and thus nullify the statutory requirement that all appropriate records be turned over to the Village Clerk."
(Barbuscia v. Edstrom (1940) 259 AD 1083, 21 NYS 2d 128.)

(b) "A retiring supervisor may be compelled to file his books and records with the town clerk for the use of his successor."
(1946 Opinions of State Comptroller, File #1460)

(c) "A former supervisor may be compelled to surrender all books and papers pertaining to his office by appropriate legal action."
(1956 Opinions of State Comptroller, File #8160)

Here the Comptroller cites Public Officers Law, Section 80, Penal Law, Section 1836 (now under the form of Penal Law, Sections 175.20 and 175.25), and Town Law, Section 29 (4), and says that the act of filing the records in the appropriate office, which is provided for in these laws, in effect ensures the turning over of public records to the successor in office.

(d) "Upon the expiration of his term, a town supervisor is required to surrender his account books to the town clerk in office, and may be compelled to do so by appropriate legal action."
(1969 Opinions of State Comptroller, File #696)

PART V - LAWS PERTAINING TO PUBLIC ACCESS TO RECORDS

5.1 FREEDOM OF INFORMATION LAW

PUBLIC OFFICERS LAW, ARTICLE 6, SECTIONS 84-90

Section 84. Legislative declaration

85. Short title

86. Definitions

87. Access to agency records

88. Access to state legislative records

89. General provisions relating to access to records; certain cases

90. Severability

Sec. 84. Legislative declaration. The legislature hereby finds that a free society is maintained when government is responsive and responsible to the public, and when the public is aware of governmental actions. The more open a government is with its citizenry, the greater the understanding and participation of the public in government.

As state and local government services increase and public problems become more sophisticated and complex and therefore harder to solve, and with the resultant increase in revenues and expenditures, it is incumbent upon the state and its localities to extend public accountability wherever and whenever feasible.

The people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality.

The legislature therefore declares that government is the public's business and that the public, individually and collectively and represented by a free press, should have access to the records of government in accordance with the provisions of this article.

Sec. 85. Short title. This article shall be known and may be cited as the "Freedom of Information Law."

Sec. 86. Definitions. As used in this article, unless the context requires otherwise: 1. "Judiciary" means the courts of the state, including any municipal or district court, whether or not of record.

2. "State legislature" means the legislature of the state of New York, including any committee, subcommittee, joint committee, select committee, or commission thereof.

3. "Agency" means any state or municipal department, board, bureau, division, commission, committee, public authority, public corporation, council, office or other governmental entity performing a governmental or proprietary function for the state or any one or more municipalities thereof, except the judiciary or the state legislature.

4. "Record" means any information kept, held, filed, produced or reproduced by, with or for an agency or the state legislature, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.

Sec. 87. Access to agency records. 1. (a) Within sixty days after the effective date of this article, the governing body of each public corporation shall promulgate uniform rules and regulations for all agencies in such public corporation pursuant to such general rules and regulations as may be promulgated by the committee on public access to records in conformity with the provisions of this article, pertaining to the administration of this article.

(b) Each agency shall promulgate rules and regulations, in conformity with this article and applicable rules and regulations promulgated pursuant to the provisions of paragraph (a) of this subdivision, and pursuant to such general rules and regulations as may be promulgated by the committee on public access to records in conformity with the provisions of this article, pertaining to the availability of records and procedures to be followed, including, but not limited to:

i. the times and places such records are available;

ii. the persons from whom such records may be obtained, and

iii. the fees for copies of records which shall not exceed twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing any other record, except when a different fee is otherwise prescribed by law.

(Section 87 Cont'd.)

2. Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except that such agency may deny access to records or portions thereof that:

(a) are specifically exempted from disclosure by state or federal statute;

(b) if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article;

(c) if disclosed would impair present or imminent contract awards or collective bargaining negotiations;

(d) are trade secrets or are maintained for the regulation of commercial enterprise which if disclosed would cause substantial injury to the competitive position of the subject enterprise;

(e) are compiled for law enforcement purposes and which, if disclosed, would:

i. interfere with law enforcement investigations or judicial proceedings;

ii. deprive a person of a right to a fair trial or impartial adjudication;

iii. identify a confidential source or disclose confidential information relating to a criminal investigation; or

iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures;

(f) if disclosed would endanger the life or safety of any person;

(g) are inter-agency or intra-agency materials which are not:

i. statistical or factual tabulations or data;

ii. instructions to staff that affect the public; or

iii. final agency policy or determinations; or

(h) are examination questions or answers which are requested prior to the final administration of such questions.

(Section 87 Cont'd.)

3. Each agency shall maintain:

(a) a record of the final vote of each member in every agency proceeding in which the member votes;

(b) a record setting forth the name, public office address, title and salary of every officer or employee of the agency; and

(c) a reasonably detailed current list by subject matter, of all records in the possession of the agency, whether or not available under this article.

Sec. 88. Access to state legislative records. 1. The temporary president of the senate and the speaker of the assembly shall promulgate rules and regulations for their respective houses in conformity with the provisions of this article, pertaining to the availability, location and nature of records, including, but not limited to:

(a) the times and places such records are available;

(b) the persons from whom such records may be obtained;

(c) the fees for copies of such records, which shall not exceed twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing any other record, except when a different fee is otherwise prescribed by law.

2. The state legislature shall, in accordance with its published rules, make available for public inspection and copying:

(a) bills and amendments thereto, fiscal notes, introducers' bill memoranda, resolutions and amendments thereto, and index records;

(b) messages received from the governor or the other house of the legislature, and home rule messages;

(c) legislative notification of the proposed adoption of rules by an agency;

(d) members' code of ethics statements;

(e) transcripts or minutes, if prepared, and journal records of public sessions including meetings of committees and subcommittees and public hearings, with the records of attendance of members thereat and records of any votes taken;

(f) internal or external audits and statistical or factual tabulations of, or with respect to, material otherwise available for public inspection and copying pursuant to this section or any other applicable provision of law;

(Section 88 Cont'd.)

(g) administrative staff manuals and instructions to staff that affect members of the public;

(h) final reports and formal opinions submitted to the legislature;

(i) final reports or recommendations and minority or dissenting reports and opinions of members of committees, subcommittees, or commissions of the legislature;

(j) any other files, records, papers or documents required by law to be made available for public inspection and copying.

3. Each house shall maintain and make available for public inspection and copying: (a) a record of votes of each member in every session and every committee and subcommittee meeting in which the member votes;

(b) a record setting forth the name, public office address, title, and salary of every officer or employee; and

(c) a current list, reasonably detailed, by subject matter of any records required to be made available for public inspection and copying pursuant to this section.

Sec. 89. General provisions relating to access to records; certain cases. The provisions of this section apply to access to all records, except as hereinafter specified:

1. (a) The committee on public access to records is continued and shall consist of the lieutenant governor or the delegate of such officer, the secretary of state or the delegate of such officer, whose office shall act as secretariat for the committee, the commissioner of the office of general services or the delegate of such officer, the director of the budget or the delegate of such officer, and six other persons, none of whom shall hold any other state or local public office, to be appointed as follows: four by the governor, at least two of whom are or have been representatives of the news media, one by the temporary president of the senate, and one by the speaker of the assembly. The persons appointed by the temporary president of the senate and the speaker of the assembly shall be appointed to serve, respectively, until the expiration of the terms of office of the temporary president and the speaker to which the temporary president and speaker were elected. The four persons presently serving by appointment of the governor for fixed terms shall continue to serve until the expiration of their respective terms. Thereafter, their respective successors shall be appointed for terms of four years. The committee shall hold no less than four meetings annually. The members of the committee shall be entitled to reimbursement for actual expenses incurred in the discharge of their duties.

(Section 89 Cont'd.)

(b) The committee shall:

i. furnish to any agency advisory guidelines, opinions or other appropriate information regarding this article;

ii. furnish to any person advisory opinions or other appropriate information regarding this article;

iii. promulgate rules and regulations with respect to the implementation of subdivision one and paragraph (c) of subdivision three of section eighty-seven of this article;

iv. request from any agency such assistance, services and information as will enable the committee to effectively carry out its powers and duties; and

v. report on its activities and findings, including recommendations for changes in the law, to the governor and the legislature annually, on or before December fifteenth.

2. (a) The committee on public access to records may promulgate guidelines regarding deletion of identifying details or withholding of records otherwise available under this article to prevent unwarranted invasions of personal privacy. In the absence of such guidelines, an agency may delete identifying details when it makes records available.

(b) An unwarranted invasion of personal privacy includes, but shall not be limited to:

i. disclosure of employment, medical or credit histories or personal references of applicants for employment;

ii. disclosure of items involving the medical or personal records of a client or patient in a medical facility;

iii. sale or release of lists of names and addresses if such lists would be used for commercial or fund-raising purposes;

iv. disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the work of the agency requesting or maintaining it; or

v. disclosure of information of a personal nature reported in confidence to an agency and not relevant to the ordinary work of such agency.

(Section 89 Cont'd.)

(c) Unless otherwise provided by this article, disclosure shall not be construed to constitute an unwarranted invasion of personal privacy pursuant to paragraphs (a) and (b) of this subdivision:

i. when identifying details are deleted;

ii. when the person to whom a record pertains consents in writing to disclosure;

iii. when upon presenting reasonable proof of identity, a person seeks access to records pertaining to him.

3. Each entity subject to the provisions of this article, within five business days of the receipt of a written request for a record reasonably described, shall make such record available to the person requesting it, deny such request in writing or furnish a written acknowledgement of the receipt of such request and a statement of the approximate date when such request will be granted or denied. Upon payment of, or offer to pay, the fee prescribed therefor, the entity shall provide a copy of such record and certify to the correctness of such copy if so requested, or as the case may be, shall certify that it does not have possession of such record or that such record cannot be found after diligent search. Nothing in this article shall be construed to require any entity to prepare any record not possessed or maintained by such entity except the records specified in subdivision three of section eighty-seven and subdivision three of section eighty-eight.

4. (a) Any person denied access to a record may within thirty days appeal in writing such denial to the head, chief executive or governing body of the entity, or the person therefor designated by such head, chief executive, or governing body, who shall within seven business days of the receipt of such appeal fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought. In addition, each agency shall immediately forward to the committee on public access to records a copy of such appeal and the determination thereon.

(b) Any person denied access to a record in an appeal determination under the provisions of paragraph (a) of this subdivision may bring a proceeding for review of such denial pursuant to article seventy-eight of the civil practice law and rules. In the event that access to any record is denied pursuant to the provisions of subdivision two of section eighty-seven of this article, the agency involved shall have the burden of proving that such record falls within the provisions of such subdivision two.

5. Nothing in this article shall be construed to limit or abridge any otherwise available right of access at law or in equity of any party to records.

Sec. 90. Severability. If any provision of this article or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of the article or the application thereof to other persons and circumstances.

Note:

For opinions and interpretations of the Freedom of Information Law we advise contacting:

Department of State
Committee on Public Access to Records
162 Washington Avenue
Albany, NY 12231

Telephone 518-474-2518

5.2 OPEN MEETINGS LAW - MINUTES

PUBLIC OFFICERS LAW, SECTION 101. MINUTES

Sec. 101. Minutes. 1. Minutes shall be taken at all open meetings of a public body which shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon.

2. Minutes shall be taken at executive sessions of any action that is taken by formal vote which shall consist of a record or summary of the final determination of such action, and the date and vote thereon; provided, however, that such summary need not include any matter which is not required to be made public by the freedom of information law as added by article six of this chapter.

3. Minutes of meetings of all public bodies shall be available to the public in accordance with the provisions of the freedom of information law within two weeks from the date of such meeting except that minutes taken pursuant to subdivision two hereof shall be available to the public within one week from the date of the executive session.

Note:

For opinions and interpretations of the Open Meetings Law we advise contacting:

Department of State
Committee on Public Access to Records
162 Washington Avenue
Albany, NY 12231

Telephone 518-474-2518

PART VI - THE NEW YORK STATE HISTORICAL RECORDS ADVISORY BOARD

6.1 ORGANIZATION, POWERS AND DUTIES OF THE HISTORICAL RECORDS ADVISORY BOARD

EXECUTIVE ORDER NO. 38. CREATION OF THE NEW YORK STATE HISTORICAL RECORDS ADVISORY BOARD AND THE POSITION OF STATE HISTORICAL RECORDS COORDINATOR (AUG. 25, 1976)

The historical records of a society constitute a unique cultural resource and are a valuable and irreplaceable body of knowledge about its people and its institutions and their past. The collection, compilation and preservation of historical records by private and public institutions should be encouraged and assisted by the State.

The federal government has created a National Historical Publications and Records Commission to "cooperate with and encourage appropriate Federal, State and local agencies and nongovernmental institutions, societies, and individuals in collecting and preserving, and when it considers it desirable, in editing and publishing the papers of outstanding citizens of the United States and other documents as may be important for an understanding and appreciation of the history of the United States." In fulfilling this role, this Commission makes recommendations to the Administrator of the federal General Services Administration as to the appropriateness of allocations and grants to State and local agencies and to non-profit organizations and institutions. The procedures of the federal Commission require that no recommendation shall be made or application for an allocation or grant be reviewed until and unless first evaluated and approved by an appropriate State Historical Records Advisory Board.

In order to encourage, assist and coordinate the collection, description, compilation and preservation of public records, and to evaluate proposals and make recommendations to the National Historical Publications and Records Commission, it is necessary and desirable to establish a State Historical Records Advisory Board to be chaired by a State Historical Records Coordinator.

Now, therefore, I, Hugh L. Carey, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York, and as Governor of the State of New York, by Executive Order, do hereby establish in the Executive Department a board to be known as the New York State Historical Records Advisory Board ("Board") and the position of State Historical Records Coordinator ("Coordinator").

General Powers and Duties

The Board shall serve as an advisory body for the planning of the collection, description, compilation and preservation of historical records and for projects proposed to be undertaken for any such purpose. Specifically, the Board may:

-- Sponsor surveys and report upon the condition of historical records in the State;

-- Make recommendations for the improvement of historical record keeping within the State;

-- Solicit or develop plans for projects relating to the collection, description, compilation or preservation, of historical records to be carried out by the State, local agency, non-profit organization or institution, or the Board with funds made available by the federal government upon the recommendation of the Commission;

-- Review proposed historical records projects by the State, local agency, or non-profit organization or institution seeking funds from the federal government where the review by and recommendation of the Board is requested or required by the Commission;

-- Develop and submit to the Commission a plan for the collection, description, compilation and preservation of historical records. Such plan shall be revised annually and shall, to the extent possible, conform to the requirements and priorities established by the Commission;

-- Review the performance and progress of historical records projects approved by the Board and the Commission and which have received funds from the federal government;

-- Report annually to the Governor on its activities and on the condition of historical records in the State.

Membership

The Board shall consist of eleven members, exclusive of the Coordinator, at least a majority of whom shall be archivists, historians or others who are in a field of research which makes extensive use of historical records, and the Coordinator, who shall serve as Chairman. Four members shall serve for an initial term of one year; four members shall serve for an initial term of two years; and three members shall serve for an initial term of three years. Thereafter, all members shall serve for a term of three years, except the Coordinator who shall serve for a term of four years.

The members of the Board shall serve without compensation, but may be reimbursed for travel and actual expenses to the extent the federal government makes funds for such purpose available to the Board.

State Historical Records Coordinator

The State Archivist of the State shall serve as the State Historical Records Coordinator. The Coordinator shall serve as Chairman of

the Board and as the chief administrative officer of the Board. The Coordinator's responsibility shall include, but not be limited to, reviewing and reporting to the Board on the performance and progress of historical records projects undertaken by the State, local agencies or non-profit organizations or institutions; reporting to the Commission on the activities of the Board; providing information concerning records programs to interested institutions and individuals, and the public within the State; providing notice of projects approved by the Board and the Commission; serving as liason to State and local government agencies and officials on matters relating to historical records programs; and when appropriate, serving as project director for projects administered by the Board.

Cooperation of other State Agencies

The New York State Archives of the State Education Department and all other State agencies having custody of or responsibility for historical records of the State, shall cooperate with, support and provide assistance to the Board and the Coordinator.

Note:

Executive Order No. 38 gives the State Archivist responsibility for coordinating the National Historical Publications and Records Commission's records grant program. Grants may be made available to local governments under this program for projects to preserve, copy, describe and organize their historically valuable records and to establish archival programs. More information, including program guidelines and application forms, is available from:

State Archivist and
State Historical Records Coordinator
New York State Archives
Cultural Education Center
Albany, NY 12230

Telephone 518-474-1195

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